

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO. 06-725 (JP)
	:	
	:	
PAYMENT PROCESSING CENTER,	:	
LLC, AND DONALD M. HELLINGER,	:	
MICHAEL WEISBERG, RANDY	:	
D. TROST, JAMI M. PEARLMAN,	:	
MICHELLE O'KEEFE QUIGLEY,	:	
RONALD HELLINGER, AND	:	
ROBERT DEBOYACE,	:	
	:	
Defendants.	:	

DEFENDANTS' MOTIONS TO DISMISS PURSUANT
TO FED. R. CIV. P. 12(b)(7) AND 9(b), DISSOLVE
THE RESTRAINING ORDER, DENY PLAINTIFFS' PRELIMINARY
INJUNCTION REQUEST OR, ALTERNATIVELY, TO ENTER DEFENDANTS'
PRELIMINARY INJUNCTION AND FOR A STAY OF DISCOVERY

Defendants, Payment Processing Center, LLC ("PPC"), Donald M. Hellinger, Michael Weisberg, Randy D. Trost, Jami M. Pearlman, Michelle O'Keefe Quigley, Ronald Hellinger, and Robert DeBoyace (collectively the "defendants"), by undersigned counsel, hereby respectfully move this Court for an Order dismissing Plaintiff's Verified Complaint ("Complaint") for failure to join indispensable parties, pursuant to Fed. R. Civ. P. 12(b)(7), or for failure to plead fraud with specificity as required by Fed. R. Civ. P. 9(b), an Order dissolving the Amended Temporary Restraining Order entered on February 21, 2006 and denying Plaintiff's preliminary injunction request.

Alternatively, the defendants move this Court to enter a preliminary injunction, attached hereto, designed to maintain the status quo, ensure no current or future violation of law, and freezing only certain assets.

Defendants also seek a stay of discovery pending the disposition of their motions to dismiss.

In support aver the following:

1. The Complaint alleges that PPC conducted business with telemarketers that were engaged in alleged fraudulent activity.

2. The Complaint does not name any of these telemarketers as a defendant to this action.

3. The telemarketers are indispensable parties to this action.

4. The Complaint must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(7) for failure to join an indispensable party. Alternatively, the Plaintiff must join these telemarketers as defendants in this action.

5. The Complaint seeks relief under 18 U.S.C. § 1345 based upon defendants' alleged violations of the mail and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343 respectively.

6. Federal Rule of Civil Procedure 9(b) requires that in all averments of fraud, the circumstances constituting fraud shall be stated with particularity.

7. The Complaint contains a multitude of vague and conclusory allegations concerning defendants' violation of the mail and wire fraud statutes.

8. The Complaint must be dismissed pursuant to Federal Rule of Civil Procedure 9(b). Alternatively, the Plaintiff should amend its complaint to comply with Rule 9(b).

9. The Temporary Restraining Order entered on February 21, 2006 is overly broad and should be dismissed under Federal Rule of Civil Procedure 65(b).

10. Similarly, the Plaintiff cannot meet its burden that is entitled to the preliminary injunction it requested under 18 U.S.C. § 1345.

11. The preliminary injunction requested by the Plaintiff is overly broad and not supported by law and should not be entered. Alternatively, the defendants propose a preliminary injunction designed to maintain the status quo, ensure no current or future violation of law, and freezing only certain assets.

12. Discovery in this matter should be stayed pending resolution of defendants' motions to dismiss.

WHEREFORE, defendants respectfully requests that this Court enter an Order:

1. dismissing Plaintiff's Complaint for failure to join indispensable parties, pursuant to Fed. R. Civ. P. 12(b)(7), or alternatively, requiring the Plaintiff to join the telemarketers as

defendants;

2. dismissing the Complaint without prejudice for failure to plead fraud with specificity as required by Fed. R. Civ. P. 9(b), or alternatively, requiring Plaintiff to file an Amended Complaint in compliance with Fed. R. Civ. P. 9(b);

5. dissolving the February 21, 2006 Temporary Restraining Order;

6. denying the preliminary injunction requested by Plaintiff, or alternatively, entering the preliminary injunction proposed by defendants; and

7. staying discovery pending the disposition of defendants' motions to dismiss.

Dated: March 14, 2006

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